

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

GARRETT SITTS, et al., PLAINTIFFS, v. DAIRY FARMERS OF AMERICA, INC., and DAIRY MARKETING SERVICES, LLC, DEFENDANTS.	Civil Action No. 2:16-cv-00287-cr
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PLAINTIFFS' SUBMISSION REGARDING REVISED JURY INSTRUCTIONS

At the August 10, 2020 hearing, the Court directed Plaintiffs to revise certain jury instructions as discussed during the initial charge conference. On August 19, 2020, the Court circulated several additional instructions that the Court drafted and/or revised.

Pursuant to the Court's directive, Plaintiffs submit these revised instructions, which include: (1) the sections/revisions tasked to Plaintiffs (with legal citations in footnotes); and (2) the supplemental instructions circulated by the Court (with Plaintiffs' proposed changes in footnotes). Specifically, a clean version of these revised instructions is attached as Exhibit A, and a compare version showing the changes between this version and the one circulated by the Court on August 10, 2020 is attached as Exhibit B.

Finally, during the August 10, 2020 hearing, the Court heard argument concerning certain statute of limitations instructions. One issue that was addressed was Defendants' argument that the statute of limitations precluded Plaintiffs from recovering damages for any time period prior to October 2005. In response, Plaintiffs argued that the statute of limitations might be tolled under the continuing violation doctrine and/or equitable tolling. Plaintiffs further stated that - -

practically speaking - - this was a narrow dispute because the only arguable pre-limitations period at issue were the months of January 2005 through September 2005. Specifically, the USDA provided Plaintiffs with certified milk weights on an annual (not monthly) basis for the years 2005 through 2017. Plaintiffs stated, however, that they would try to obtain certified milk weights from the USDA for the months of October through December 2005 to moot the issue. The Court encouraged Plaintiffs to take this approach:

THE COURT: All right. Here is what I am recommending that plaintiff do. If the defendants are going to stand on the October 5th -- October 8th, 2005, date, which they're entitled to do, certainly, you should make sure you have a way of segregating January to September of that month [sic] so that we are not hearing about prelimitations damages. I will await the proof at trial and make sure that this instruction jives with the verdict form so that there is no confusion as to what acts caused damages for which the plaintiffs may recover and what activities are prior to the limitations period and are allowed to be presented to the jury to show the lay of the land, so to speak, and that's the term I used, at the time the conspiracy is alleged to have operated. So we'll see if we can find a happy balance between those two.

See August 10, 2020 Charge Conference Transcript at 216.

Plaintiffs contacted the USDA who agreed to provide certified milk weights for the months of October 2005 through December 2005.¹ With these monthly milk weights, Plaintiffs can limit their damages to the pre-limitations period, thereby, obviating the need to raise either the continuing violation or equitable tolling doctrines.

¹ Plaintiffs expect to receive these certified monthly milk weights from the USDA sometime in the next few weeks.

Respectfully Submitted,

PLAINTIFFS,

By their attorneys,

/s/ Dana A. Zakarian

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Dated: August 24, 2020

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CERTIFICATE OF SERVICE

I, Dana A. Zakarian, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 24th day of August 2020.

/s/ Dana A. Zakarian